



## BOARD OF PUBLIC WORKS

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BPW Advisory No.: P-001-96 **Revised**

*Original Date: March 1, 1996*

**Revision Date: October 27, 2004**

*Subject: Minority Business Enterprise – Subcontracting Documentation*

*Effective Date: Immediately*

**Purpose:** To provide forms that a procurement agency may use with solicitations for which the agency has established Minority Business Enterprise subcontracting goals.

**Background:** The Procurement Law requires each agency to “structure its procurement procedures . . . to try to achieve the following results:

- (1) a minimum of 7% of the unit’s total dollar value of procurement contracts is to be made directly or indirectly from certified minority business enterprises classified by the certification agency as African American-owned businesses;
- (2) a minimum of 10% of the unit’s total dollar value of procurement contracts is to be made directly or indirectly from certified minority business enterprises classified by the certification agency as women-owned businesses; and
- (3) an overall minimum of 25% of the unit’s total dollar value of procurement contracts is to be made directly or indirectly from all certified minority business enterprises.”

Md. Code, State Finance & Procurement Article, § 14-302(a)(1).

To achieve this goal, an agency must “assess the potential for certified MBE participation in each contract.” COMAR 21.11.03.09A. If, after assessing the specific solicitation in light of the factors set forth in the regulation, the agency determines that subcontracting is the most appropriate procurement strategy, the regulation calls for the agency to establish a certified MBE subcontract goal for that solicitation.

Once a goal is established, bidders/offerors must comply with certain outreach mandates and must provide certain documentation, as set forth in the statute and in the regulations.

To that end, the Board of Public Works has designed the attached documents that agencies may use as an exhibit to the Invitation for Bids or the Request for Proposals.

Agencies may modify and individualize these forms to accommodate the needs established for a specific solicitation. These forms do not have to be used, but are provided so that agencies may have a framework from which to structure their certified MBE subcontract procedures.

**NOTE:** Until the amendments to COMAR 21.11.03 Minority Business Enterprise Policies are adopted, the following Notice is suggested:

*NOTICE TO BIDDERS/OFFERORS*

*Questions or concerns regarding the MBE requirements of this solicitation must be raised before the opening of bids or receipt of initial proposals.*

**Questions concerning this Advisory may be addressed to:**

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**EXHIBIT TO SOLICITATION**  
**STATE OF MARYLAND**  
**DEPARTMENT OF \_\_\_\_\_**  
**MINORITY BUSINESS ENTERPRISE PARTICIPATION**

**PURPOSE**

Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the minority business enterprise (MBE) goal stated in the Invitation for Bids or Request for Proposals. MBE performance must be in accordance with this Exhibit, as authorized by Code of Maryland Regulations (COMAR) 21.11.03. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

**MBE GOALS AND SUB GOALS**

- ☐ An MBE subcontract participation goal of \_\_\_\_ percent of the total contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the bidder or offeror agrees that this dollar amount of the contract will be performed by certified minority business enterprises.

OR

- ☐ An overall MBE subcontract participation goal of \_\_\_\_ percent of the total contract dollar amount has been established for this procurement. This dollar amount includes:
- ☐ A sub goal of \_\_\_\_ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified as women-owned businesses.
  - ☐ A sub goal of \_\_\_\_ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified as African American-owned businesses.

By submitting a response to this solicitation, the bidder or offeror agrees that these dollar amounts of the contract will be performed by certified minority business enterprises as specified.

- ◆ A prime contractor — including an MBE prime contractor — must accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors.
- ◆ A prime contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE subcontract goal with certified MBE subcontractors.



## SOLICITATION AND CONTRACT FORMATION

- ◆ A bidder or offeror must include with its bid or offer:
  - (1) A completed Certified MBE Utilization and Fair Solicitation Affidavit (Attachment A) whereby the bidder or offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
  - (2) A completed MBE Participation Schedule (Attachment B) whereby the bidder or offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission. The bidder or offeror shall specify the price and/or the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

**If a bidder or offeror fails to submit Attachment A and Attachment B at with the bid or offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.**

- ◆ Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.
  - (1) Outreach Efforts Compliance Statement (Attachment C)
  - (2) Subcontractor Project Participation Statement (Attachment D)
  - (3) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11.
  - (4) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

**If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.**

## CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

1. Submit monthly to the Department a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.
5. At the option of the procurement agency, upon completion of the contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### ATTACHMENTS

- A. Certified MBE Utilization and Fair Solicitation Affidavit (must be submitted with bid or offer)
- B. MBE Participation Schedule (must be submitted with bid or offer)
- C. Outreach Efforts Compliance Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- D. Subcontractor Project Participation Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)